# Investigation into the circumstances surrounding the death in custody of a prisoner at HMP Albany, on 27 October 2004 at St Mary's Hospital, Newport, Isle of Wight

**Report by the Prisons and Probation Ombudsman for England and Wales**

**February 2006**

This is the report of an investigation into the death of a man at St Mary's Hospital, Newport, Isle of Wight, on 27 October 2004, while in custody at HMP Albany. The cause of death was adenocarcinoma (cancer) of the rectum which had spread to his brain, lung, adrenal gland and lymphatic system.

One of my senior investigators conducted this investigation.

A clinical review into the care and treatment given to the man was undertaken by an independent Clinical Investigator for my office.

I would like to extend my condolences to the man's family for their loss. I would also like to thank the Governor of HMP Albany, and his staff for their help and co-operation during this investigation. I am especially grateful to the Deputy Governor, who acted as the establishment's liaison officer.

I make two recommendations in this report.

**Stephen Shaw CBE**
**Prisons and Probation Ombudsman** **February 2006**

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## Summary

On 7 December 2001, the man who is the subject of this report was sentenced to eight years imprisonment for various offences. On being sentenced, the man was initially held in HMP Altcourse. On 23 January 2002, he transferred to HMP Albany. He was a Category B prisoner until January 2005, when he achieved Category C status. He was due for release on 20 March 2007.

The man was an insulin dependent diabetic, whose health began to deteriorate significantly during 2003. Around September 2003, he complained of faecal incontinence. He was given support for pain and weight loss and was referred to St Mary's Hospital, Newport, Isle of Wight. He was then referred to Southampton General Hospital, having been diagnosed by St Mary's with advanced cancer of the rectum. The cancer was downstaged with chemotherapy and radiotherapy and a colostomy was undertaken in December 2003. After chemotherapy and radiotherapy, further surgery took place in June 2004.

On reviewing the man in August 2004, a consultant in radiotherapy and oncology at Southampton General Hospital, raised the likelihood that the cancer had spread to the man's brain. This was confirmed by a CT scan at the end of August. His health deteriorated significantly after this and the cancer spread further to his lung, adrenal gland and lymphatic system.

On 24 October, the man was generally very weak and - after assessment by a member of healthcare staff and with the agreement of the Medical Officer - he was taken to St Mary's Hospital where he sadly died on 27 October. He was 50 years old when he died.

Apart from periods of time spent as an inpatient in HMP Parkhurst, St. Mary's Hospital and Southampton General Hospital, the man was managed on normal location during his time at Albany. It appears that he was no problem for staff to manage. However, one officer voiced his concerns to the Governor on 24 October when the man's health had deteriorated to such an extent that the officer considered that he could no longer function properly within the prison.

The clinical review concluded that the man received basic care in that he attended all his hospital appointments. However, the overall conclusion was that the standard of care was inadequate in view of the terminal nature and incapacitating symptoms of his illness.

## Conduct of the investigation

During the course of initial inquiries, my investigator reviewed all the relevant documentation and established a chronology of events. Notices were issued to staff and prisoners telling them of the investigation and offering them the opportunity of contributing. There were no responses to these notices.

One of my Family Liaison Officers contacted the man's family and offered them the opportunity to meet with her and my investigator to discuss the purpose of the investigation and to raise any concerns or questions that they would like explored and addressed. The man's family did not want a meeting but expressed some concerns which they wanted investigated. They confirmed that they would like to see a copy of the draft report.

The family were concerned that the man's medical problems (diabetes and cancer) had not been diagnosed at the earliest opportunity and thought that the man had missed some hospital appointments. The family were surprised that, when the man's possessions were returned to them, there were no letters or cards as they were sure that he kept such items. He had also told his mother that if anything happened to him he had left two letters, one for her and one for his ex-partner. They have not received these letters. They said that they had visited the prison, had seen the man's cell and spoken to a number of people who had known him, and had found this to have been a positive experience.

The prison had paid £712 of the £940 cost of transferring the man's body to his home area to be buried. The remaining £228 was recouped from the man's prison account. The family wanted to know whether the prison were prepared to pay anything towards the funeral expenses and said that the prison had asked them to contribute towards the cost of transferring the man's body. They said that there was no prison representative at the funeral and no flowers were sent by the prison. These issues are addressed in this report.

My investigator wrote to the Chair of the Albany branch of the Prison Officers' Association (POA), and to the Chair of the Independent Monitoring Board (IMB), to tell them about the investigation process and invite them to meet with her. One member of staff was interviewed during the course of the investigation. He was offered the opportunity of being accompanied by a work colleague or Trade Union official.

My investigator contacted Her Majesty's Coroner to tell him of the nature and scope of the investigation. The Coroner provided a copy of the Post Mortem report of 8 November 2004. This recorded the cause of death as natural causes, namely disseminated adenocarcinoma of the rectum (cancer of the rectum).

An independent Clinical Investigator for my office, undertook a clinical review into the care and treatment given to the man while at Albany.

## Background Information

### *The man*

The man was born in September 1954. He was arrested by the North Wales Police Family Protection Unit at Wrexham and, on 27 March 2001, was charged with offences that occurred between 10 March 1994 and 28 February 1996. He was convicted and subsequently sentenced to eight years imprisonment on 7 December 2001.

The man had a history of offending dating back to 1970. The offences were varied and mainly consisted of motoring offences - taking a conveyance without authority, driving without insurance, and driving while disqualified. Sentences had included imprisonment, community service orders, probation orders and financial penalties.

There was reference made during the man's time at Albany that he would like to be transferred to a prison closer to his family. It seems no actual application was made by the man for a transfer, and there is no evidence to suggest a transfer was formally considered by the prison despite a number of entries in his medical record.

During 2003, the man's health began to deteriorate dramatically. He was diagnosed with insulin dependent diabetes in May 2003, and a biopsy in October 2003 confirmed that he had advanced cancer of the rectum. His health deteriorated further during 2004 and he was admitted to St Mary's Hospital on 24 October 2004. He passed away on 27 October, with some members of his family at his bedside.

A prison officer told my investigator that the man was very brave throughout his illness, particularly during the last few days of his life. The officer said that the man laughed and joked throughout his treatment, and that he had a very dry sense of humour. He said that the man tried to function normally right up to the end.

***HMP Albany***

HMP Albany was designed and built as a category C training prison in the early 1960s. Soon after it opened, a decision was taken to upgrade the security to make Albany part of the dispersal (now high security) system. A later review concluded that Albany should no longer be a dispersal prison, and in 1992 it was re-designated as a category B closed training prison. Albany operates as an assessment centre for the core sex offender treatment programme.

Up to 526 prisoners can be held at Albany. The accommodation consists of five four-storey cell blocks designated A to E wings. There is an 11 cell induction unit and a nine cell segregation unit with two special cells. All wings are identical and hold a maximum of 88 prisoners in single cells with in-cell power and access to electronic night sanitation. In May 2003, a new ready to use unit (RTU) opened, housing 80 category C prisoners.

At the time the man was at Albany, the health services were directly managed by the Prison Service in collaboration with the services for Parkhurst and Camp Hill prisons. The healthcare service at Albany focuses on primary care and operates from 8.00am to 9.00pm daily. There is a well established working relationship with the Isle of Wight Primary Care Trust, which took over funding and commissioning the health services for the three prisons in April 2005.

Records show three Albany prisoners died in custody in 2004, including this man. In 2005, two Albany prisoners died in custody. The circumstances of all these deaths were investigated by my office and all were from natural causes. There are some common issues between the man's case and one of these other investigations that I shall refer to later.

**The man's time at Albany**

On 23 January 2002, the man who died was transferred from HMP Altcourse to Albany. He had been in Altcourse since being sentenced on 7 December 2001. In May 2003, he was diagnosed as an insulin dependent diabetic and he received appropriate treatment and medication for this condition. On 5 September 2003, the man complained of bowel problems (severe constipation) and he was seen by a medical officer in Healthcare. On 29 September 2003, he complained of a further change in bowel habit, this time severe diarrhoea. He was again seen by a medical officer in Healthcare. On 1 October 2003, he was referred by a doctor at Albany, to the surgical team at St. Mary's Hospital. The referral letter said that the man had suffered a three month change of bowel habit and malignancy needed to be excluded.

On 6 October 2003, the man's mother, telephoned the prison. She was concerned that her son had severe stomach pains when she visited him two weeks previously. She was also concerned that he told her that a hospital appointment had been cancelled due to a shortage of staff. The prison asked her to write in with her concerns.

On 7 October 2003, the man was seen in Healthcare. There was concern about his general health. He had not eaten properly for two months and was reducing his insulin. He complained of having his bowels opened 25 times a day. He said that he felt lethargic. A member of healthcare staff spoke to the surgical team at St Mary's Hospital, who confirmed that they would see him within two weeks once a referral letter had been received. There was agreement that the man needed to be referred to St Mary's Hospital for surgical assessment.

On 8 October 2003, the man was seen in Healthcare feeling very unwell. A doctor requested an urgent appointment for him with the surgical team at St Mary's Hospital. He was admitted to St. Mary's Hospital. The referral letter explained that the doctor did not feel that the man could wait for an out patient appointment and asked the hospital to investigate his change of bowel habit over the past two months which was also disrupting his diabetic care. On the same day, the prison phoned the man's mother back to tell her that her son was in hospital.

On 10 October 2003, biopsies were taken at St Mary's Hospital and the man was diagnosed with cancer of the rectum, which appeared to be fairly advanced. The man was in hospital as an inpatient until 13 October. He had a colostomy in December 2003 at Southampton General Hospital. Shortly after, he started a course of chemotherapy and radiotherapy at Southampton General to downstage the tumour prior to further surgery.

On 5 January 2004, it was noted in the medical record that a hospice was to be contacted regarding the man's management. There is only one hospice located on the Isle of Wight (Mountbatten Hospice). Their policy is that prisoners sent there are unescorted by prison staff and the man would therefore need to be released under temporary licence (ROTL). Albany say

that in view of his offences, any risk assessment would need to have been thorough and comprehensive and it is unlikely that they would have agreed to such conditions.

In June 2004, the man underwent radical surgery. On 3 August 2004 a consultant surgeon at St Mary's Hospital, wrote a letter to the Governor regarding the man's recent operation. The letter said that the chances of the man being totally cured were extremely remote, and asked if this could be taken into account if there were any decisions to be made regarding his future. The letter was copied to the doctor at Albany.

The Prison Service Order PSO 6000, 'Early Release On Compassionate Grounds' (ERCG), sets out the procedures for the early release on licence for all prisoners on compassionate grounds. It explains that early release on compassionate grounds may be considered on the basis of a prisoner's medical condition or as a result of tragic family circumstances. It is granted only in exceptional circumstances. Paragraph 12.4.1 states: 'Early release may be considered where a prisoner is suffering from a terminal illness and death is likely to occur soon. There are no set time limits, but three months may be considered to be an appropriate period. It is therefore essential to obtain a clear medical opinion on the likely life expectancy. The Secretary of State will also need to be satisfied that the risk of re-offending is past and that there are adequate arrangements for the prisoner's care and treatment outside prison.'

Albany has no in-patient bed facility and HMP Parkhurst has only 12 beds which are continually fully occupied, as they were at this time. The man indicated that he did not want to be transferred to Parkhurst and wanted to stay in Albany, on F and G Wing.

On 9 August, the man's Medical Record noted that the consultant surgeon was going to write to the Governor as the man was hoping to transfer nearer to his family. There is no evidence that the consultant surgeon wrote the letter or that this was followed up by the person who made the entry (the signature is illegible).

On 18 August, the Stoma Nurse saw the man and documented how ill he looked and his dramatic weight loss. This does not appear to have been acted upon by the nurses.

On 20 August a consultant in radiotherapy and oncology, Southampton General Hospital, wrote to the Governor. The letter stated that there was a very high chance that the man's cancer would recur. There was a request for him to have a brain scan to investigate his complaint of severe headaches. The letter also stated that the prognosis was poor for the man, and asked whether it would be possible to transfer him to a prison closer to his family. The man suggested a location. There is a handwritten note on that letter, dated 27 August 2004, 'please file.' This letter was also sent to two doctors at Albany. A senior officer working in Albany's Observation Classification and Allocation (OCA) Unit, dealt with the man's transfer request in August.

Unfortunately, by the time this request was made, the man's health was significantly deteriorating and the possibility for a prison move was considered impractical. To move the man to another prison would have needed acceptance from them that they would take on the necessary care required to look after him. There is an entry on the man's history sheet on 5 August, which states, 'Wing aware, discussed prison move.' At this time work began on collating all relevant information to submit a case for compassionate release. This included obtaining a detailed report from the Registered Medical Practitioner, as well as Security Risk Assessments based on his offences. On 15 October, the paperwork was sent for to the Prison Service Parole Board for consideration of the man's early release on compassionate grounds. The Governor wrote to the consultant in radiotherapy and oncology at Southampton General Hospital, on 20 October advising him that a request had been submitted for the man's early release.

On 26 August, there is a note in the man's Medical Record (again with an illegible signature): 'Spoke to staff on E Wing regarding possible move of prisons. Nothing has been decided or discussed with inmate, but wing staff are aware he has a CT scan appointment.' That same day, the CT scan confirmed that the man had a brain tumour.

On 10 September, the dietician at Southampton Hospital wrote a letter to the 'prison doctor'. There is no documented evidence in the Medical Record that the recommendations in the letter were acted upon.

On 20 September, there is a note in the man's Medical Record which states: 'Weak, is trying to cope on codeine alone as pain management. To see consultant oncologist 7 October. To see dietician here. Has parole coming up in 12 months. Needs parole now to make most use of the time he has left-4-6 months?.' Again, there is no evidence that the man saw the dietician and yet again the signature is illegible.

On 23 September, a handwritten letter was sent to a member of staff who works in the kitchens at Parkhurst. The letter asked that person to see the man as he was having difficulty maintaining his weight. There is no evidence that this happened and in fact, despite several entries on the Medical Record, there is no evidence that appropriate action was ever taken to help the man gain weight.

On 24 September, the consultant in radiotherapy and oncology at Southampton General hospital wrote to the Governor again. That letter explained that the CT scan performed in August confirmed that the cancer had spread to the man's brain. The prognosis was stated to be as little as one or two months, and was unlikely to be more than six to eight months. That consultant asked whether consideration could be given to transferring the man to a prison near his family or to release him on compassionate grounds. That letter was also sent to a doctor at Albany.

On 15 October, the paperwork for consideration of early release for the man on compassionate grounds, due to his medical condition, was sent by the Discipline Clerk in Albany, to the Prison Service Area Manager's Office. The request was approved by a Governor at Albany.

On 20 October, the Governor wrote to the consultant in radiotherapy and oncology in reply to his letter requesting consideration of compassionate release or transfer of the man to a prison near his family. The letter from the Governor said, 'In summary we have submitted a request for the man's early release. We hope to have a decision soon. Under the circumstances I am optimistic of the outcome.'

**Events of 24 October**

Wing staff, particularly one officer, became increasingly concerned about the man's wellbeing. He was not eating or moving from his cell on G2 landing. On 24 October, that officer wrote a memo to the Governor, voicing his concerns, and the officer moved the man to a ground floor cell, on G1 landing.

That officer said in his memo: 'I am speaking on behalf of several staff who are appalled, as I, at the condition and treatment of the man. In consultation with other staff it was decided to move the man from his cell on G2 landing to G1 landing as he could no longer negotiate the stairs. This man is barely capable of functioning such is his physical deterioration.' The officer also advised healthcare about the man's poor health that day and a member of healthcare staff visited the man in his cell. The man was immediately admitted to Parkhurst as an in-patient. There is an entry in the man's Medical Record: 'Seen in Wing. Inmate has lost a considerable amount of weight in the last few days and is not very coherent. Very sleepy and legs, feet and ankles swollen. Not able to collect meals or make phone calls, not able to leave cell at all. Has not eaten for a few days but still managing to drink. Medical Officer contacted and agreed the man should be admitted to E3 (Parkhurst) until I can speak to the Healthcare Manager to try for a hospice'.

The man was transferred to St Mary's Hospital on the same day. The officer who had been concerned about the man told my investigator that the man had not wanted to move from his cell on the second floor, and he felt that he wanted to die in that cell. He thought that the man did not want his family to see him when he was so ill. The officer said that the man was adamant that he did not want to move from his cell on G2 landing, but the officer said that he had no option but to move the man to a ground floor cell for his own wellbeing as he was no longer able to negotiate the stairs to collect his meals.

The Governor replied to the officer's memo and he said that he had not realised the seriousness of the man's condition until that day. He told the officer that the man had been admitted to hospital.

The man's health deteriorated further, the cancer had spread further to his lung, adrenal gland and lymphatic system, and he died in St Mary's Hospital at around 12:15am on 27 October. The man was certified dead at 12:20am by the doctor on duty. The man's mother, two sisters and his partner were with him when he died.

An officer who was on bedwatch duty and he informed the prison control room immediately. The control room then informed the local police and duty governor. The police arrived shortly after and they spoke to the man's family, who were still at the hospital.

**Clinical review**

The clinical review concludes that, despite a lack of documentary evidence in the Medical Record, the man appears to have attended all his hospital appointments for treatment and all follow-up appointments**.** The care given by the hospital consultants appears to have been of a high standard and the handover letters from the consultants to the prison doctors were thorough.

The consultants wrote on several occasions to the Governor and doctors at Albany regarding their concerns. However, these concerns do not appear to have been acted upon by the prison until 15 October, when they prepared the paperwork for consideration of the man's early release on compassionate grounds. The Governor wrote to the consultant in radiotherapy and oncology, on 20 October advising him that a request had been submitted for the man's early release.

The medication prescribed appears to have been well considered and appropriate. However, there appears to have been some confusion on how to best deal with the man's constipation, which was probably caused by the mixture of his condition and codeine based medicine.

The clinical review says that some of the entries in the man's Medical Record are confused and unclear. For example, the fronts of the prescription charts are not completed adequately. The notes are generally unclear, with some information on different sheets so the records do not always run chronologically. There is very little mention in the Medical Record of the man's hospital appointments, diagnosis, treatment and care plan, which would have made it difficult to provide a high standard of continuous care. Also, first names are sometimes used in the Medical Record, which makes it difficult to establish exactly who saw the man. In addition, there do not appear to be any discharge/handover letters in the Medical Record. These are issues in common with those that my office has addressed in the investigation of the death of another prisoner at Albany, in September 2004.

The clinical review finds that an entry on 9 September appears to be the only documentary evidence that healthcare staff contacted the hospital about the man when he was an inpatient. All this meant that the man was not provided with an appropriate level of continuous care.

Finally, there is no mention in the Medical Record of any counselling offered to the man at what must have been a very traumatic time for him.

The review concludes that the man who died received 'a basic level of care which meant that he attended all his hospital appointments. However, in the reviewer's opinion, 'the overall standard of care which the man received was inadequate in view of the terminal nature and debilitating symptoms of his illness.'

**Events after the man's death**

A letter of condolence was sent by the Governor to the man's mother on 27 October. A memorial service for the man was held shortly after his death and was well attended.

The man's funeral took place in the family's locality. No representative from Albany attended the funeral due to the distance involved. The prison did not contribute any flowers as it is not their policy to do so. Prisoners may organise a collection for flowers between themselves, but this did not happen in this case.

PSO 2710 states that a prison should offer to pay reasonable funeral expenses, but this is at the prison's discretion. The prison contributed by paying £712 for the man's body to be transferred to his home area. The remaining cost of £228 was recouped from the money in the man's prison account and the family say that the prison asked them to contribute towards the cost of transferring the man's body. No additional money was paid by the prison towards the cost of the funeral. The man's belongings were returned to his family. The list of these belongings does not have any record of any letters or cards.

**Consideration and conclusions**

The man's health deteriorated during 2003, and in October 2003 he was diagnosed with cancer of the rectum which appeared to be fairly advanced. He was immediately scheduled for a course of radiotherapy and chemotherapy to downstage the tumour before an operation in June 2004. The man also had a colostomy in January 2004. In August 2004, a CT scan revealed that the cancer had spread to his brain. The man's health deteriorated further until September 2004 when the hospital consultant concluded that, sadly, his condition was terminal and he had only a matter of months to live.

The man's family have raised issues in respect of the care which he received while in Albany. The clinical review concludes that, despite the lack of documentation in the Medical Record, it seems that the man did attend all his hospital appointments and all follow up appointments. However, the man's medical records were poorly completed and there was a clear lack of communication between healthcare staff and the hospitals attended by him.

There was also a lack of communication between healthcare staff when issues with the man's care were identified and a lack of action in taking these matters forward. In addition, no consideration was given to offering counselling to him to help him come to terms with his terminal illness.

Overall this meant that the man received a poor standard of continuous care. For example, there are notes in his medical record regarding management of his healthcare which do not appear to have been followed up by healthcare staff. The question of contacting a hospice was not followed up in January 2004, the matter of a transfer nearer the man's home was not pursued in August, recommendations from a dietician in September were not acted upon, and there is no evidence that appropriate action was ever taken to help him gain weight.

**Members of healthcare staff should be reminded, in light of this report:**

- **that all entries in healthcare records should be dated accurately, and they should state their position and sign and print their name clearly after each entry;**

- **that Healthcare records should contain clear documentation in chronological order to ensue that continuity of care is provided;**

- **that they should communicate appropriately with any hospital involved in treating a prisoner to ensure an appropriate standard of continuous care;**

- **that they should endeavour to provide a more holistic approach to care to ensure that all the patient's needs are met - clinical and psychological - including counselling, if appropriate;**

- **that any action recommended regarding a patient's care should be taken forward appropriately and in a timely fashion;**

- **that one of their roles is as a patient's advocate.**

The prison was aware on 3 August 2004 that the prognosis for the man was very poor. The hospital consultant wrote to the Governor and the prison doctor on 3 August, 20 August and 24 September, detailing the prognosis and asking that consideration be given to transferring the man to a prison closer to his family. The letter of 24 September also asked whether compassionate release could be considered for him as his life expectancy was thought to be as little as one to two months, certainly no longer than six to eight months. The options available to the prison were:

- Arrange for the man to be transferred to an appropriate hospice.
- Arrange for the man to be transferred to a prison closer to his family.
- Transfer the man to HMP Parkhurst which has an inpatient facility.
- Consider the man's release, on licence, for compassionate reasons.

The prison considered the above options and on 15 October, the paperwork was sent for to the Prison Service Parole Board for consideration of the man's early release on compassionate grounds. This was around seven weeks after the prison had been made aware of the severity his condition. I feel that perhaps this could have been done in a more speedy manner. The Governor Jones wrote to the consultant, on 20 October advising him that a request had been submitted for the man's early release.

The prison paid £712 towards the cost of transferring the man's body to his home area. An additional £228 was recouped from his prison account. I have found no evidence that the prison tried to recoup any further money from the man's family.

PSO 2710 indicates that the prison should give consideration to contributing towards funeral costs, but no figure is mentioned. Ultimately this is the prison's decision. I take the view that Albany should have given further consideration to their contribution, as the man's family live a considerable distance from the Isle of Wight.

I accept that it was difficult for the prison to be represented at the man's funeral due to the distance involved.

The prison maintains that all the man's belongings have been returned and they did not include any letters or cards. However, clearly this is an important issue for the man's family and, although I do not think a formal recommendation is required, I suggest that the prison undertakes a thorough check to ensure that there are no outstanding letters or cards.

**Recommendations**

**1. Members of healthcare staff should be reminded, in light of this report:**

- **that all entries in healthcare records should be dated accurately, and they should state their position and sign and print their name clearly after each entry;**

- **that Healthcare records should contain clear documentation in chronological order to ensue that continuity of care is provided;**

- **that they should communicate appropriately with any hospital involved in treating a prisoner to ensure an appropriate standard of continuous care;**

- **that they should endeavour to provide a more holistic approach to care to ensure that all the patient's needs are met - clinical and psychological - including counselling, if appropriate;**
- **that any action recommended regarding a patient's care should be taken forward appropriately and in a timely fashion;**

- **that one of their roles is as a patient's advocate.**

**2. Using a risk assessed approach to the available options, the patient should be involved in discussions about where they would prefer to be cared for as the end of life approaches in accordance with the NHS Cancer Plan, and the necessary arrangements made at an earliest opportunity. The Governor and the PCT should arrange for this to be done.**

**Prison service comment:**

**Albany has confirmed that a further search has been made to ensure that all the man's property has been located. No further items were found.**